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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

Arizona Corporation Commission

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JEFF HATCH-MILLER, Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES

JUN 21 2005

JUN 22 2005

AZ Corporation Commission
Director Of Utilities

DOCKETED BY

[Signature]

IN THE MATTER OF THE APPLICATION OF
ORBITCOM, INC. FOR A CERTIFICATE OF
CONVENIENCE AND NECESSITY TO PROVIDE
COMPETITIVE RESOLD INTEREXCHANGE
AND FACILITIES-BASED LOCAL EXCHANGE
TELECOMMUNICATIONS SERVICES IN
ARIZONA.

DOCKET NO. T-04274A-04-0640

DECISION NO. 67945

OPINION AND ORDER

DATE OF HEARING: April 26, 2005

PLACE OF HEARING: Phoenix, Arizona

ADMINISTRATIVE LAW JUDGE: Amanda Pope
Dwight D. Nodes

APPEARANCES: Michael W. Patten, ROSHKA HEYMAN & DEWULF,
PCL, on behalf of OrbitCom, Inc.; and

David Ronald, Staff Attorney, Legal Division, on behalf
of the Utilities Division of the Arizona Corporation
Commission.

BY THE COMMISSION:

Having considered the entire record herein and being fully advised in the premises, the
Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

FINDINGS OF FACT

1. On September 2, 2004, OrbitCom, Inc. ("OrbitCom" or "Applicant") filed with the
Commission an application for a Certificate of Convenience and Necessity ("Certificate") to provide
resold interexchange and facilities-based local exchange telecommunications services within the
State of Arizona. The application petitioned the Commission for determination that its proposed
services should be classified as competitive.

2. On February 14, 2005, the Commission's Utilities Division Staff ("Staff") filed its
Staff Report, which recommended approval of the application and included a number of additional

1 recommendations.

2 3. On March 2, 2005, a Procedural Order was issued setting this matter for hearing on
3 April 26, 2005 and setting various procedural deadlines.

4 4. On April 5, 2005, Applicant docketed an Affidavit of Publication that complies with
5 Commission rules.

6 5. On April 26, 2005, a full public hearing in this matter was held as scheduled.
7 Applicant appeared telephonically and was represented by local counsel. Staff appeared and was
8 represented by counsel. The hearing was conducted before a duly authorized Administrative Law
9 Judge. Evidence was presented and testimony was taken. At the conclusion of the hearing, the
10 Administrative Law Judge took the matter under advisement and informed the parties that a
11 Recommended Opinion and Order would be prepared for the Commissioners' consideration.

12 6. OrbitCom is incorporated under the laws of the State of South Dakota and is
13 authorized to do business in Arizona.

14 7. Applicant has the technical capability to provide the services that are proposed in its
15 application.

16 8. Currently there are several incumbent providers of local exchange and interexchange
17 services in the service territory requested by Applicant, and numerous other entities have been
18 authorized to provide competitive local and interexchange services in all or portions of that territory.

19 9. It is appropriate to classify all of Applicant's authorized services as competitive.

20 10. According to Staff, OrbitCom submitted unaudited financial statements for the twelve
21 month period ending December 31, 2003. These financial statements list assets of \$542,107, equity
22 of \$19,401, and a net income of \$292,585.

23 11. Staff recommends that OrbitCom's application for a Certificate to provide competitive
24 facilities-based local exchange and resold interexchange telecommunications services be granted
25 subject to the following conditions:

26 (a) that, unless it provides services solely through the use of its own facilities,
27 OrbitCom be ordered to procure an Interconnection Agreement, within 365
28 days of the effective date of the Order in this matter or 30 days prior to the
provision of service, whichever comes first, that must remain in effect until
further order of the Commission, before being allowed to offer local exchange

service;

- (b) that OrbitCom be ordered to file with the Commission, within 365 days of the effective date of the Order in this matter or 30 days prior to the provision of service, whichever comes first, its plan to have its customers' telephone numbers included in the incumbent's Directories and Directory Assistance databases;
- (c) that OrbitCom be ordered to pursue permanent number portability arrangements with other LECs pursuant to Commission rules, federal laws and federal rules;
- (d) that OrbitCom be ordered to abide by and participate in the AUSF mechanism instituted in Decision No. 59623, dated April 24, 1996 (Docket No. RT-00000E-95-0498);
- (e) that OrbitCom be ordered to abide by the quality of service standards that were approved by the Commission for Qwest in Docket No. T-0151B-93-0183;
- (f) that OrbitCom be prohibited from barring access to alternative local exchange service providers who wish to serve areas where OrbitCom is the only provider of local exchange service facilities;
- (g) that OrbitCom be ordered to certify, through the 911 service provider in the area in which it intends to provide service, that all issues associated with the provision of 911 service have been resolved with the emergency service providers within 365 days of an Order in this matter or 30 days prior to the provision of service, whichever comes first, which certification must remain in effect until further Order of the Commission;
- (h) that OrbitCom be ordered to abide by all the Commission decisions and policies regarding CLASS services;
- (i) that OrbitCom be ordered to provide 2-PIC equal access;
- (j) that OrbitCom be required to notify the Commission immediately upon changes to its name, address or telephone number;
- (k) that OrbitCom be ordered to comply with all Commission rules, orders, and other requirements relevant to the provision of intrastate telecommunications service;
- (l) that OrbitCom be ordered to maintain its accounts and records as required by the Commission;
- (m) that OrbitCom be ordered to file with the Commission all financial and other reports that the Commission may require, and in a form and at such times as the Commission may designate;
- (n) that OrbitCom be ordered to maintain on file with the Commission all current tariffs and rates, and any service standards that the Commission may require;
- (o) that OrbitCom be ordered to cooperate with Commission investigations including, but not limited to, customer complaints;
- (p) that OrbitCom be subject to the Commission's rules and the 1996

Telecommunications Act to the extent that they apply to CLECs; and

- (q) that OrbitCom be ordered to file an application with the commission pursuant to A.A.C. R14-2-1107 if the Applicant desires to discontinue service. OrbitCom should be required to notify each of its customers and the Commission 60 days prior to filing an application to discontinue service, and any failure to do so should result in forfeiture of the Applicant's performance bond.

15. Staff further recommended that OrbitCom's application for a CC&N to provide intrastate telecommunications services should be granted subject to the following conditions:

- (a) OrbitCom be ordered to file conforming tariffs within 365 days from the date of an Order in this matter or 30 days prior to providing service, whichever occurs first, and in accordance with the Decision;

- (b) In order to protect OrbitCom's customers:

(1) OrbitCom should be ordered to procure a performance bond equal to \$110,000. The minimum bond amount of \$110,000 should be increased in increments of \$55,000 whenever the total amount of the advances, deposits and prepayments is within \$11,000 of the bond amount;

(2) OrbitCom should docket proof of the performance bond within 365 days of the effective date of an Order in this matter or 30 days prior to the provision of service, whichever comes first, and must remain in effect until further Order of the Commission; and

(3) If at some time in the future, OrbitCom does not collect from its resold interexchange customers an advance, deposit, or prepayment, OrbitCom be allowed to file a request for cancellation of its established performance bond regarding its resold interexchange service. Such request must reference the Decision in this docket and must explain the applicant's plan for canceling its performance bond. Upon receipt of such filing and after Staff review, Staff will forward its recommendation to the Commission.

- (c) If any of the above timeframes are not met, that OrbitCom's CC&N should become null and void without further Order of the Commission and no extensions for compliance should be granted.

16. At the hearing, OrbitCom agreed to comply with all of Staff's recommendations.

17. In its Staff Report, Staff stated that based on information obtained from the Applicant, it has determined that OrbitCom's fair value rate base ("FVRB") is zero, and is not useful in either a fair value analysis or in setting rates. Staff further stated that in general, rates for competitive services are not set according to rate of return regulation. Staff has reviewed the rates to be charged by the Applicant and believes they are just and reasonable as they are comparable to other

1 competitive local carriers, local incumbent carriers, major long distance carriers operating in Arizona
2 and comparable to the rates the Applicant charges in other jurisdictions. Therefore, while Staff
3 considered the FVRB information submitted by the Applicant, that information should not be given
4 substantial weight in this analysis.

5 18. Staff's recommendations, as set forth herein, are reasonable.

6 20. OrbitCom's fair value rate base is determined to be zero for purposes of this
7 proceeding.

8 CONCLUSIONS OF LAW

9 1. Applicant is a public service corporation within the meaning of Article XV of the
10 Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

11 2. The Commission has jurisdiction over Applicant and the subject matter of the
12 application.

13 3. Notice of the application was given in accordance with the law.

14 4. A.R.S. § 40-282 allows a telecommunications company to file an application for a
15 Certificate to provide competitive telecommunications services.

16 5. Pursuant to Article XV of the Arizona Constitution, as well as the Arizona Revised
17 Statutes, it is in the public interest for Applicant to provide the telecommunications services set forth
18 in its application.

19 6. Applicant is a fit and proper entity to receive a Certificate authorizing it to provide
20 competitive facilities-based local exchange and resold interexchange telecommunications services in
21 Arizona as conditioned by Staff's recommendations.

22 7. The telecommunications services that the Applicant intends to provide are competitive
23 within Arizona.

24 8. Pursuant to Article XV of the Arizona Constitution as well as the Competitive Rules,
25 it is just and reasonable and in the public interest for Applicant to establish rates and charges that are
26 not less than the Applicant's total service long-run incremental costs of providing the competitive
27 services approved herein.

28 9. Staff's recommendations, as set forth herein, are reasonable and should be adopted.

10. OrbitCom's competitive rates, as set forth in its proposed tariffs, are just and reasonable and should be approved.

ORDER

IT IS THEREFORE ORDERED that the application of OrbitCom, Inc. for a Certificate of Convenience and Necessity for authority to provide competitive resold interexchange and facilities-based local exchange telecommunications services in Arizona shall be, and is hereby, granted, conditioned upon OrbitCom's timely compliance with the following three Ordering Paragraphs.

IT IS FURTHER ORDERED that OrbitCom shall file conforming tariffs in accordance with this Decision within 365 days of this Decision or 30 days prior to providing service, whichever comes first.

IT IS FURTHER ORDERED that OrbitCom shall procure a performance bond equal to \$110,000 the earlier of 365 days from the effective date of this Order or 30 days prior to the commencement of service.

IT IS FURTHER ORDERED that OrbitCom shall comply with all of the Staff recommendations set forth in the above-stated Findings of Fact and Conclusions of Law.

IT IS FURTHER ORDERED that if OrbitCom fails to meet the timeframes outlined in the Ordering Paragraphs above, that the Certificate of Convenience and Necessity conditionally granted herein shall become null and void without further Order of the Commission.

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IT IS FURTHER ORDERED that if OrbitCom fails to notify each of its customers and the Commission at least 60 days prior to filing an application to discontinue service pursuant to A.A.C. R14-2-1107, that in addition to voidance of its Certificate of Convenience and Necessity, OrbitCom's performance bond shall be forfeited.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 21st day of June, 2005.

BRIAN C. McNEIL
EXECUTIVE SECRETARY

DISSENT _____

DISSENT _____

AP:mlj

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